

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

SEP 15 1983

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The data you submitted shows that you are organized as a corporation to operate a property owners association whose primary purpose is to own and maintain all roads, parks, areas and facilities dedicated to the public use in [REDACTED] subdivision.

In correspondence with the Service concerning your application for exemption, you revealed the following additional information about your actual operations (this information was submitted in answer to question #16 of our letter dated [REDACTED]):

"Attached is a composite plot of [REDACTED] [REDACTED] showing all lots, tracts and acreages. This area holds a total of [REDACTED] single-family homes and/or week-end cottages. There are no apartments, condominiums or mobile homes. There are a total of [REDACTED] unimproved lots. The [REDACTED] park areas are shown in blue, as well as launch ramp, boat dock and lift, and fishing dock. These [REDACTED] park areas, launch ramp, boat dock and lift, and fishing dock are owned and maintained by [REDACTED]. There are no swimming pools, tennis courts, or club houses not privately owned. The area is not surrounded by a fence and there is no security guard. The size of the subdivision is approximately [REDACTED] acres. The launch ramp, fishing dock, and park areas are all maintained and are for the use of the residents of [REDACTED] [REDACTED], their friends and visitors and are not for public use. There are presently [REDACTED] property owners, with [REDACTED] paying their yearly assessment. The [REDACTED] paying assessments are members and entitled to vote in meetings."

Section 501(c)(3) of the Code provides exemption for:

"Corporations...organized and operated exclusively for religious, charitable,...or educational purposes,...no part of the net earnings of which inures to the benefit of any private shareholder or individual..."

Code	Initials	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Revk
Summary							

Section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its Articles of Organization -

"(A) Limit the purposes of such organization to one or more exempt purposes; and

(B) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes."

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that:

"An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3)..."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that all the organizations there described must serve a public rather than a private interest.

Revenue Ruling 70-486 held that an organization formed to preserve a lake used as a public recreation facility qualified for exemption under section 501(c)(3). The organization in this case helped preserve the lake by treating the water in the lake and by otherwise improving its condition for recreational purposes. The rationale for granting exemption under section 501(c)(3) as stated in the ruling was:

"By treating the water, removing algae, and otherwise improving the condition of the water, thereby insuring the continued use of the lake for public recreational purposes, the organization is performing a charitable activity. . . . The benefits to be derived from the organization's activities flow principally to the general public through the maintenance and improvement of public recreational facilities".

The decision in Revenue Ruling 70-486 was in keeping with the Service's principle that community recreational facilities may be classified as charitable if they are provided for the use of the general public of a community. A recent example of this was established in Revenue Ruling 59-121, 1959-1 CB 140, where a nonprofit corporation which operated a swimming pool and playground for all the residents of a community was held to be exempt under section 501(c)(3).

[REDACTED]

In applying the foregoing law and ruling to the facts in your case it appears you do not qualify for exemption under section 501(c)(3) because you maintain recreational facilities which are not for public use, for example, your launch ramp, fishing dock and park areas. Organizations described in section 501(c)(3) must serve a public rather than a private interest. You, however, are serving the private interests of your members by maintaining recreational facilities solely for their use.

Accordingly, we have determined that you are not exempt as an organization described in Code section 501(c)(3). It follows that contributions to your organization are not tax deductible and that you are required to file Federal income tax returns on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

[REDACTED]

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely yours,

[REDACTED]
District Director

Enclosures:
Publication 892
Form 6018